IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.3

Criminal Appeal No. 169/2001

Municipal Board Kashipur District Nainital……Appellant.

Vs.

Shamsher ……Respondent.

Hon'ble Irshad Hussain, J.

Heard Sri Pradeep Kumar Lohini learned counsel for the appellant and Sri Dharamveer learned counsel for the respondent.

This appeal was preferred against the judgment and order dated 16-6-1983 passed by the then Munsif Magistrate Kashipur, District Nainital whereby the written complaint was dismissed on the ground that the same was barred by time as contemplated by section 468 of the Code of Criminal Procedure.

2- From perusal of the impugned judgment it is evident that the Municipal authorities came to know about the alleged encroachment on 23-6-1979 and sthe written complaint was thereafter filed on 1.3.1980, i.e. after more than six months of the knowledge of the alleged commission of the offence as punishable under section 265 (2)(3)/ 307 of the U.P. Nagarpalik Adhiniyam. Section 468 (2)(a) of Code of Criminal Procedure require that the period of limitation for a complaint shall be six months if the offence is punishable with fine only. It is undisputed that the offences alleged were punishable with the fine only and, therefore, the complaint could have only been filed within the prescribed period of six months. Having not been done so the learned Magistrate has rightly dismissed the petition as being barred by time.

3- In view of above there is no merit in this appeal and the same is dismissed.

(Irshad Hussain, J.)

Dated: 14-11-2003

ISB